

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF:)

T. K. M.)

) OAH No. 09-0548-CSS

) CSSD No. 001034899

DECISION AND ORDER

I. Introduction

The Obligor, T. K. M., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 14, 2009. The Obligee children are M. and J.

The hearing was held on October 27, 2009. Both Mr. M. and the custodian of record, K. L. B. appeared by telephone. Erinn Brian, Child Support Specialist, appeared for CSSD. The hearing was recorded; the record closed on November 10, 2009.

Based on the evidence and after careful consideration, Mr. M.'s child support is modified to \$141 per month for one child (J.) from March 2009 through May 2009; and \$191 per month for two children (M. and J.) from June 2009 through November 2009, and ongoing.

II. Facts

A. History

Mr. M.'s child support obligation for M. and J. previously was set at \$50 per month in 2005.¹ Mr. M. initiated modification of the order on February 18, 2009.² On February 26, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. M. provided income information.⁴ On September 14, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. M.'s modified ongoing child support at \$195 per month, effective March 1, 2009.⁵ Mr. M. filed an appeal on September 27, 2009, asserting the children are covered by the Indian Health Services.⁶

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Exh. 4.
5 Exh. 5.
6 Exh. 6.

B. Material Facts

The parties to this case have two children, M. and J. M. emancipated in September 2009 and J. is currently 15 years of age. Although Ms. B. is listed as the custodian of record, M. lived with Mr. M. in 2009, from January 27th – May 15th. Both parties agreed these were the dates M. was in Mr. M.'s home in 2009.

Mr. M. is currently unemployed, but he receives income from tribal dividends. He estimated his annual income from dividends at \$7,177.04 in 2009.⁷ When the 2009 PFD of \$1,305 is added to this figure, it results in total annual income of \$8,482.04. This total income figure, when inserted into CSSD's online child support calculator, results in child support amounts of \$191 per month for two children and \$141 per month for one child.⁸

Mr. M. is married. He and his wife have three children in the home younger than the obligees, M. and J. Mr. M.'s wife manages the No Name City airport and he helps her on occasion with snow removal and other miscellaneous job tasks.

M. is currently enrolled in the 9th grade but he is not attending school regularly at this time.⁹ He does not have enough credits to advance to the next grade, so he may be taking computer classes.¹⁰

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹¹ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹² If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a material change in circumstances has occurred and the order may be modified.

Mr. M.'s child support previously was set at \$50 per month. Pursuant to the petition for modification, CSSD calculated his modified child support at \$195 per month for two children and \$144 per month for one child, based on his 2009 Child Support Guidelines Affidavit and

⁷ Exh. 4 at pg. 7.

⁸ See Attachment A.

⁹ Exh. 7 at pg. 2.

¹⁰ *Id.*

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² AS 25.27.190(e).

supporting documents. With a minor change to correct for the actual 2009 PFD amount, these child support figures become \$191 per month for two children and \$141 per month for one child.

After the hearing, CSSD accepted the parties' testimony that M. was living with Mr. M. from January through May 2009, so the agency indicated that Mr. M. should only be charged for one child from March 2009, the effective date of the modification, through May 2009, and that the support amount should return to the two-child amount as of June 2009. CSSD's suggestion is well taken, and should be adopted, based on the testimony of both Mr. M. and Ms. B. that M. lived with Mr. M. during that portion of 2009.

Under AS 25.27.061, an obligor parent is liable for paying support for a child who has reached the age of 18 years, so long as the child is still "actively pursuing a high school diploma or an equivalent level of technical or vocational training" and is also "living as a dependent" with the custodial parent. M. reached the age of 18 years in September 2009, so if he is not attending school such that he meets the requirements of AS 25.27.061, or he is not still living with Ms. B., Mr. M. should be relieved of paying support for the child. The record suggests M. may not be attending school at all, but the evidence is not clear at this time.¹³ Upon Mr. M.'s request to CSSD, the agency should make a determination whether Mr. M. is still liable for M.'s support.

IV. Conclusion

Mr. M. established that he is not liable for support for M. for the period from March 2009 through May 2009. However, with the one minor adjustment based on the actual 2009 PFD amount, CSSD's calculation of his modified child support amount was correct, and the corrected figures should be adopted.

V. Child Support Order

- Mr. M.'s child support is modified to \$141 per month for one child (J.), effective March 1, 2009, and further modified to \$191 per month for two children (M. and J.), effective June 1, 2009, and ongoing;
- Mr. M. is not liable for paying support for M. from March 2009 through May 2009 because the child lived in the home with Mr. M. during that time;

¹³ See Exh. 7 at pg. 3.

- All other provisions of CSSD's September 14, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 30th day of November, 2009.

By: Signed
Kay L. Howard
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 18th day of December, 2009.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]